

REMARKS

The application has been amended and is believed to be in condition for allowance.

Amendments to the Disclosure

Claims 1, 9, 10 and 14 are amended to overcome the Official Action's objections and rejections, as detailed below.

Claims 1-14 are further amended with style revisions in consideration of U.S. practice and preferences.

The amendments to the claims find support in the specification and the drawing figures as originally filed and do not introduce new matter.

Formal Matters - Objections to the Drawings

The Official Action objected to the drawings, stating that the substantially vertical uprights with respect to claims 1 and 9, and i) the partition comprising two vertical side edges associated with a vertical side rail, ii) a device for mounting the partition on a vertical wall having a slide and a vertical runner, and iii) the slide and the vertical running being mounted so they are able to move relative to each other in a horizontal direction with respect to claim 14, must be shown or the features canceled from the claims.

In reply, claims 1, 9 and 14 are amended to obviate the Official Action's objections. In particular, claims 1 and 9 are amended such that the non-pictured elements are not recited, and claim 14, amended into independent form, recites the invention

configured in a vertical configuration consistent with the specification at page 11, lines 12-18.

Withdrawal of the objections to the drawings is therefore earnestly solicited.

Formal Matters – Objections to the Specification

The Official Action objected to the specification based on informalities based on the “lower rail” and the “floor” having numerical references different from that pictured in the drawing figures.

In reply, the specification is amended to overcome the Official Action’s objections. Withdrawal of the objection to the specification is respectfully solicited.

Formal Matters – Objections to the Claims

The Official Action objected to claim 1, stating that the period in the preamble at line 6 should be removed.

In reply, claim 1 is amended responsive to the Official Action’s objection. Withdrawal of the objection is respectfully solicited.

Formal Matters – Section 112, second paragraph

The Official Action rejected claim 10, stating that the phrase “it being possible for” renders the claim indefinite.

In reply, claim 10 is amended to overcome the indefiniteness rejection. Withdrawal of the rejection under 35 USC 112, second paragraph is earnestly requested.

Substantive Issues - Section 103

The Official Action rejected claims 1-3, 9-12, and 14 under 35 USC 103(a) as being unpatentable over Dixon (US 4,103,463; "DIXON") in view of Karytinos (US 4,918,899; "KARYTINOS").

The Official Action rejected claim 4 under 35 USC 103(a) as being unpatentable over DIXON, KARYTINOS, and further in view of Sykes (US 4,905,428; "SYKES").

The Official Action rejected claim 5 under 35 USC 103(a) as being unpatentable over DIXON, KARYTINOS, SYKES, and further in view of Lewis et al. (US 3,292,328; "LEWIS").

The Official Action rejected claim 6 under 35 USC 103(a) as being unpatentable over DIXON, KARYTINOS, and further in view of Herren (US 6,058,668; "HERREN").

The Official Action rejected claims 7, 8, and 13 under 35 USC 103(a) as being unpatentable over DIXON, KARYTINOS, and further in view of Russel et al. (US 6,122,871; "RUSSEL").

The rejections are respectfully traversed for at least the reasons that follow.

The Official Action alleges that DIXON teaches all the features of claim 1, except for the reversible snap-fitting means. DIXON discloses two embodiments, the first embodiment illustrated on Figures 2 and 6, and the second embodiment illustrated on Figure 8.

The Official Action further alleges that KARYTINOS teaches a reversible snap-fitting means, making reference to elements 21, 22 of Figure 2. The Official Action contends that one of skill at the time of invention would have modified DIXON to include the snap-fitting means of KARYTINOS under the motivation to allow for quick and easy assembly and disassembly of the partition.

Applicant respectfully disagrees. As is well known, the Official Action bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. The Examiner's articulated reasoning in the rejection must possess a rational underpinning to support the legal conclusion of obviousness. *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).

Respectfully, the Official Action has not satisfied this burden. No rational motivation exists to combine the references as proposed because the modification of DIXON with the snap-fitting means of KARYTINOS would render DIXON unsuitable for its intended purpose.

A review of the invention taught by DIXON is helpful.

DIXON is directed to a portable wall system wherein wall panels have lower support means for movably supporting the panels on a floor surface (Abstract; column 1, lines 18-24). To

overcome a problem in the prior art wherein movable panels tend to damage a ceiling surface (column 1, lines 27-33), DIXON teaches the upper portion of the panel having a spring biased ceiling engaging member generally of U-shaped configuration telescopic in relation to the upper edge of the panel (column 1 line 65 to column 2 line 6).

DIXON's panel is balanced by a track, guide, or downwardly-opening U-shaped clips (indicated by element 104 on Figures 2 and 5) in which the head 102 of bolt 96 fits and slides with the movement of the panel (column 2, lines 13-24) as the panel rolls along the floor on casters 36 (Figure 6; column 3, lines 48-60; Figure 2, 6). DIXON's casters 36 are operatively engaged to the floor only when the elevating and lowering mechanism 34 is adjusted via bolt 64 so as to raise (relative to the panel) the U-shaped member of the lower portion of the panel 46, (column 4, lines 39-44). The action of raising and lowering the U-shaped member 46 to engage and disengage the casters 36 raises and lowers the entire panel, causing the spring-loaded, telescoping ceiling seal assembly 28 to adjust accordingly.

The telescoping ceiling seal assembly 28 comprises a H-shaped member 86 fixed to the top end of the panel engaged to a U-shaped member 78, wherein the U-shaped member 78 is urged upward and away from the H-shaped member 86 by a spring 100 surrounding a bolt 96; thus, the sealing strips 94 to either side of the track 102 are maintained in contact with the ceiling as

the panel is raised and lowered (column 4, lines 48-54; column 4, lines 63-68; Figure 2).

The threading portion of the bolt engages with a thread block 98 inside a peripheral frame 26 inside the upper portion of the panel. The thread block is configured to "float" vertically within the peripheral frame 26 so that the bolt 96 and the U-shaped member 78 will move downwardly in unison when upward pressure is exerted thereon by the action of lowering the U-shaped member 46 (column 5, lines 4-11). The thread block and peripheral frame thus offers both a guide for the bolt and also controls a minimum and maximum height of the spring-biased assembly 28 (Figure 2).

Both of DIXON's upper and lower spring-biased assemblies 28, 30 operate based on two parts slidably interfacing with one another by way of sealing strips. In particular to the ceiling seal assembly 28, H-shaped member 86 and U-shaped member 78 are slidably interfaces with each other by way of sealing strips 90, 92 (column 4, lines 54-57; Figure 2).

The Official Action, referring to the H-shaped member 86 as a "slide" and the U-shaped member 78 as a "top runner", proposes to modify provide the H-shaped member 86 a and U-shaped member 78 with the reversible snap-fitting means of KARYTINOS. However, the snap-fitting means of KARYTINOS do not slide.

KARYTINOS teaches snap-fitting means for use in frame assemblies (column 1, lines 23-25) such that "frictional

engagement is very considerable and the studs can be easily located accurately and retain their positions without the need to use fasteners," (column 2, lines 54-58). It is clear from KARYTINOS Figures 1 and 2, and also from the Abstract, that the KARYTINOS fasteners are designed to hold fast and tight to maintain the structural integrity of a construction frame.

Were the snap-fitting means of Figure 2 of KARYTINOS provided to the H-shaped member 86 a and U-shaped member 78, as proposed, the H-shaped member 86 and U-shaped member 78 would be tightly snapped together and have no telescoping properties as required by DIXON (the legs 82 of the U-shaped member "are telescopically received between two parallel strips 84 forming a portion of an H-shaped member 86 having a web 88 extending transversely of the upper edges of the panel members 22 and 24," column 4, lines 50-54). In particular, the spring 100 would be ineffective, having no strength to overcome the KARYTINOS snap-fitting engagement between the H and U-shaped members.

As the H and U-shaped members would not slide against each other if engaged with the KARYTINOS snap-fitting means, the sealing stops 94 atop the U-shaped member 78 would not be gently brought to bear against the ceiling 16 with the operative raising and lowering of the lower U-shaped member 46 (thereby raising the possibility of damaging the ceiling; see column 1, lines 27-33).

Accordingly, the proposed combination would render DIXON's spring-biased assembly 28 unsatisfactory for its intended

purpose. It therefore follows that one of skill would have had no rational motivation to modify DIXON with KARYTINOS as proposed.

It is further respectfully submitted that the U-shaped member 78 fails to teach or suggest a "top runner... adapted to be fixed to the ceiling" as indicated by the Official Action.

On the contrary, the U-shaped member 78 is taught to slide against the ceiling 16 as the panel moves with casters 36. The only fixed relationship taught by DIXON with respect to the U-shaped member 78 is to the H-shaped member 86 by way of bolt 96, and here, the U-shaped member 78 is fixed to the H-shaped member 86 only in a horizontal direction, as the bolt 96 and spring 100 allow the U-shaped member 78 to move at least as far as the thread block 98 within the peripheral frame 26.

Therefore, it is respectfully submitted that, in addition to the above with respect to motivation to combine, DIXON fails to teach all the features recited by claim 1. Hence, even if one of skill were to combine the references as proposed by the Official Action, the combination would fail to lead to the invention as recited in claim 1.

Based at least on all the foregoing, it is respectfully submitted that claim 1 is patentable as being novel and non-obvious over DIXON and KARYTINOS.

It is also respectfully submitted that claims depending from claim 1 are patentable at least for depending from a patentable parent claim.

It is further respectfully submitted that claim 14, amended into independent form, is patentable at least for the reasons set forth above as to claim 1.

Applicant also respectfully submits that DIXON does not teach or suggest a slide joinable or fastenable to a rail, as recited by claim 1. For example, Figure 8 illustrates an H-shaped member 86, 128 fitted or fastened to the upper edges of the side boards 22, 24. No means is provided for joining or fastening the slide 86, 128 to the rail 26, 26'. This is particularly evident in Figure 8, corresponding to the second embodiment, but no teaching in DIXON suggests that the first embodiment has such a fitting or fastening, either.

Further to the first embodiment, it is respectfully submitted that the thread block 98 fails to teach a joining between a slide and an upper rail, as suggested by the Official Action. On the contrary, the thread block 98 is slideably mounted into the upper rail (column 5, lines 7-11) in order to guide and maintain the bolt 96 in a centered position within the slide 86 when the U-shaped member 78 together with the bolt 96 are moved downward in the slide 86. The thread block 98 cannot achieve any joining of the upper rail 26 to the slide 86.

Based on all the reasons set forth above, reconsideration and allowance of the claims are respectfully requested.

From the foregoing, it will be apparent that Applicant has fully responded to the February 2, 2009 Official Action and that the claims as presented are patentable. In view of this, Applicant respectfully requests reconsideration of the claims, as presented, and their early passage to issue.

In order to expedite the prosecution of this case, the Examiner is invited to telephone the attorney for Applicant at the number set forth below if the Examiner is of the opinion that further discussion of this case would be helpful.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

YOUNG & THOMPSON

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/Jeremy G. Mereness/  
Jeremy G. Mereness, Reg. No. 63,422  
209 Madison Street  
Suite 500  
Alexandria, VA 22314  
Telephone (703) 521-2297  
Telefax (703) 685-0573  
(703) 979-4709

JGM/fb